

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HOWARD EUGENE RAFF,

No. C 11-00956 SBA (PR)  
C 11-01411 SBA (PR)  
C 11-01412 SBA (PR)  
C 11-01413 SBA (PR)

Petitioner,

v.

KELLY HARRINGTON, Warden,

Respondent.

**ORDER DIRECTING THE CLERK OF THE COURT TO REVOKE FILING IN C 11-01411 SBA (PR), C 11-01412 SBA (PR) AND C 11-01413 SBA (PR); AND TO FILE THOSE PETITIONS AS SUPPLEMENTS TO THE PETITION IN C 11-00956 SBA (PR), AND DIRECTING RESPONDENT TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE GRANTED**

Petitioner is a state prisoner who is incarcerated at Kern Valley State Prison. He has filed four pro se petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. All four petitions challenge the validity of Petitioner's 2007 state conviction. Venue is proper in this district because Petitioner was convicted in Mondocino County. 28 U.S.C. § 2241.

Having reviewed all four petitions, the Court concludes that last three petitions, Case nos. C 11-01411 SBA (PR), C 11-01412 SBA (PR) and C 11-01413 SBA (PR), were filed erroneously as new actions. Rather, they should have been filed as supplements to the petition in Case no. C 11-00956 SBA (PR). Accordingly, the Clerk of the Court is hereby ordered to REVOKE filing of the petitions in Case nos. C 11-01411 SBA (PR), C 11-01412 SBA (PR) and C 11-01413 SBA (PR), and to file the petition from those actions as a "Supplement to the Petition" in Case no. C 11-00956 SBA (PR). Petitioner has paid the full filing fee in all four cases. The Clerk shall close the file in Case nos. C 11-01411 SBA (PR), C 11-01412 SBA (PR) and C 11-01413 SBA (PR). All further matters pertaining to Petitioner's federal habeas corpus claims will proceed solely in Case no. C 11-00956 SBA (PR).

It does not appear from the face of the petition in Case no. C 11-00956 SBA (PR) or from the supplements to the petition taken from the other cases that they are without merit. Good cause appearing, the Court hereby issues the following orders:

1           1.       The Clerk of the Court shall serve a copy of this Order and the petition and all  
2 attachments thereto (docket no. 1 in Case no. C 11-00956 SBA (PR)) as well as all the supplements  
3 to the petition (docket no. 1 in C 11-01411 SBA (PR), C 11-01412 SBA (PR) and C 11-01413 SBA  
4 (PR)) upon Respondent and Respondent's attorney, the Attorney General of the State of California.<sup>1</sup>  
5 The Clerk shall also serve a copy of this Order on Petitioner at his current address.

6           2.       Respondent shall file with this Court and serve upon Petitioner, within **one-hundred**  
7 **and twenty (120) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5  
8 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not  
9 be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records  
10 that have been transcribed previously and that are relevant to a determination of the issues presented  
11 by the petition.

12           3.       If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with  
13 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should  
14 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**  
15 after the date Petitioner is served with Respondent's Answer.

16           4.       Respondent may file with this Court and serve upon Petitioner, within **sixty (60) days**  
17 of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an Answer, as set  
18 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If  
19 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an  
20 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the  
21 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**  
22 **days** of receipt of any opposition.

23           5.       It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court  
24 and Respondent informed of any change of address and must comply with the Court's orders in a  
25 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the  
26 Court by mailing a true copy of the document to Respondent's counsel.

27 \_\_\_\_\_  
28           <sup>1</sup> Kelly Harrington, the current warden of the prison where Petitioner is incarcerated, has been  
substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1           6.       Extensions of time are not favored, though reasonable extensions will be granted.  
2 Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline  
3 sought to be extended.

4           IT IS SO ORDERED.

5 DATED:    4/21/11

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 HOWARD EUGENE RAFF,

5 Plaintiff,

6 v.

7 M D BITER et al,

8 Defendant.  
9 \_\_\_\_\_/

Case Number: CV11-00956 SBA

**CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
11 Court, Northern District of California.

12 That on April 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
15 located in the Clerk's office.

16 Howard E. Raff F79476  
17 Kern Valley State Prison  
18 P.O. Box 5104  
19 Delano, CA 93216

20 Dated: April 25, 2011

21 Richard W. Wieking, Clerk  
22 By: LISA R CLARK, Deputy Clerk  
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